

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ELAINE PICCOLO,

Plaintiff,

-against-

MEMORANDUM & ORDER
14-CV-6312 (JS) (ARL)

D.A.L.T. MALLOY LLC and
NICHOLE STARR,

Defendants.

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APPEARANCES

For Plaintiff: Darren Arthur Aronow, Esq.
 The Law Office of Darren Aronow, P.C.
 8b Commercial Street, Suite 1
 Hicksville, NY 11801

For Defendants: No appearance

SEYBERT, District Judge:

Pending before the Court is Magistrate Judge Arlene R. Lindsay's Report and Recommendation ("R&R"), recommending that this Court deny plaintiff Elaine Piccolo's ("Plaintiff") motions for default judgment (Docket Entries 13 and 17). For the following reasons, the Court ADOPTS Judge Lindsay's R&R in its entirety.

BACKGROUND

This action was commenced on October 28, 2014 against defendants D.A.L.T. Malloy LLC ("D.A.L.T.") and Nichole Starr ("Starr" and collectively, "Defendants"). Plaintiff alleges that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et. seq., and state law in connection with the collection of a consumer debt. (See Compl. Docket Entry 1.)

On June 24, 2015, Plaintiff moved for the entry of a default judgment against Defendants. (Docket Entry 13.) On July 1, 2015, Plaintiff filed a motion to supplement her motion for default judgment (Docket Entry 17).

On July 2, 2015, the undersigned referred Plaintiff's motions to Judge Lindsay for an R&R on whether the motions should be granted. (Docket Entry 18.)

On January 8, 2016, Judge Lindsay issued her R&R. (Docket Entry 19.) The R&R recommends that the Court deny Plaintiff's motion for default judgment. (R&R at 6-7.) The R&R further recommends that the Court sua sponte vacate the entry of default against D.A.L.T. and Starr. (R&R at 6-7.)

The Court's Electronic Order dated January 29, 2016 directed Plaintiff to serve a copy of the R&R on Defendants and file proof of service on ECF on or before February 9, 2016. On February 9, 2016, Plaintiff filed an Affidavit of Service indicating that D.A.L.T.'s registered agent was served on January 14, 2016. (Docket Entry 20.) However, Plaintiff has failed to file proof of service that the R&R was served on Starr.

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court

need only satisfy itself that there is no clear error on the face of the record.” Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

As set forth above, Plaintiff failed to file proof of service that Starr was served with the R&R in accordance with both the R&R and the Court’s Electronic Order. Parenthetically, Plaintiff’s apparent failure to serve Starr lends further support to Judge Lindsay’s recommendation that the Court decline to enter a default judgment and vacate the Clerk’s entry of default against Starr. The Court sees no need to delay in adopting Judge Lindsay’s R&R to permit Plaintiff to effectuate service of the R&R in light of the Court’s denial of Plaintiff’s motions and the absence of any prejudice to Starr. As set forth below, Plaintiff is directed to serve a copy of this Memorandum & Order on both D.A.L.T. and Starr and file proof of service on ECF.

Objections were due within fourteen days of service of the R&R. The time for filing objections has expired, and neither Plaintiff nor D.A.L.T. has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Lindsay’s R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Lindsay's R&R (Docket Entry 19) is ADOPTED in its entirety. The Clerk of the Court is directed to VACATE the entry of default judgment against Defendants. Plaintiff is directed to serve a copy of this Memorandum & Order on Defendants and file proof of service on ECF.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 8, 2016
Central Islip, New York